

## SETTLEMENT AGREEMENT

The SETTLEMENT AGREEMENT (“Agreement”) is entered into, by, and between the CITY OF MIAMI BEACH, its elected and appointed officials, its employees, and its insurers, attorneys, or agents of any kind (collectively, the “City”); JESSICA SALABARRIA (“Salabarria”) and the FRATERNAL ORDER OF POLICE, WILLIAM NICHOLS LODGE NO. 8 (“FOP”) (all collectively, the “Parties”).

WHEREAS, Salabarria is employed by the City in its Police Department; and

WHEREAS, the FOP is the exclusive bargaining representative for a bargaining unit of City police employees, including Salabarria; and

WHEREAS, the FOP, with and on behalf of Salabarria filed the following grievance:

Union Grievance No. 2018-11 (“Grievance”); and

WHEREAS, Salabarria has filed an EEOC Charge, EEOC Charge No. 510-2018-06495 (“EEOC Charge”); and

WHEREAS, the above-listed grievance and EEOC charge are all pending and constitute all the charges and grievances by or on behalf of Salabarria that have been or may be filed as of the Effective Date of this Agreement that have not otherwise been resolved or otherwise achieved finality; and

WHEREAS, the Parties, wish to avoid the burdens of litigation and to resolve the disputes between them.

NOW, THEREFORE, intending to be legally bound but without setting precedent, do hereby agree as follows:

1. Recitals. The Parties acknowledge and agree that the Recitals above are true to the best of their knowledge and belief and incorporate them as if fully set forth here and that the Recitals are a material inducement for the Parties to enter into this Agreement.

2. EEOC Charge and Grievance Withdrawn With Prejudice; Discipline and Reinstatement. Salabarria and the FOP agree that, by executing this Agreement, they will simultaneously withdraw, with prejudice, the Grievance and Salabarria will file a Notice of Withdrawal with Prejudice of her EEOC Charge. Additionally, Salabarria agrees to accept a twenty (20) hour soft-suspension as discipline for IA Case No. I2017-028. The City agrees that Salabarria shall return to work as a Sergeant in the Police Department, with an effective start date as Sergeant of August 12, 2019 and entitled to the appropriate Sergeant pay retroactive upon full execution of this agreement. Salabarria agrees that she shall be considered a Probationary Sergeant for a total

of six (6) months<sup>1</sup>, that she will attend FTO for a period of one (1) month (which is part of not additional to) the probationary and that she will be assigned a Field Training Officer.

3. Release Of Claims, Covenant Not To Sue. Salabarria hereby releases and waives any and all claims of any kind whatsoever against the City that she had, has or may have from the beginning of the world through the date of this Agreement. The claims released include, but are not limited to, any and all claims arising under any federal, state, local or foreign statute or regulation, including, without limitation, those relating to any and all unfair or discriminatory employment practices (for example, employment discrimination based on race, national origin, sex, religion, age, disability or handicap, and harassment of any kind) under the federal Civil Rights Acts of 1866, 1871, 1964 and 1991 (including Title VII), the federal Age Discrimination in Employment Act ("ADEA"), including the Older Workers Benefits Protection Act, the Florida Civil Rights Act, the federal Americans With Disabilities Act, the federal Employee Retirement Income Security Act of 1974, the Internal Revenue Code of 1986, the federal Fair Labor Standards Act of 1938, the Florida Wage Discrimination Law, the Florida Wage and Hour laws, Florida and federal statutes regarding "whistleblower" activities, the federal Family and Medical Leave Act of 1993, the federal Rehabilitation Act of 1973, the Consolidated Omnibus Budget Reconciliation Act of 1985 (known as "COBRA"), the Federal Fair Credit Reporting Act, any other federal and state employment-related statutes and regulations, and any other employment-related local ordinance up to the date of this Agreement.

The disputes released by Salabarria also include any and all disputes she had, has or may believe to have against the City in contract or at common law, including, but not limited to: breach of oral, written and/or implied contract, breach of an implied covenant of good faith and fair dealing, wrongful discharge under any theory (including for lack of good cause) in violation of public policy and constructive discharge, intentional and/or negligent infliction of emotional distress, negligent retention and/or supervision, assault, battery, negligence, misrepresentation or fraud of any kind, duress, unfair dealing, breach of fiduciary or other duty, invasion of privacy, defamation, and interference with contract and/or prospective economic advantage up to the date of this Agreement.

Salabarria further covenants and agrees that she will not file a lawsuit or claim of any kind asserting the claims released herein. Salabarria understands that this Agreement does not prohibit participating in an investigation or the filing of a charge with the EEOC or like administrative agency, but she does understand and agree that, not only is she releasing the stated claims, but also is releasing the right to any monetary damages or any relief of any kind from those claims, whether brought by her or on her behalf. Salabarria hereby represents that she has not assigned to any person or entity any rights to the claims released herein.

4. Effect; Precedent. The Parties agree that Salabarria remains subject to all applicable rules, policies, orders, procedures or regulations of whatever kind, except as may be expressly otherwise provided herein. The Parties agree that the facts underlying this Agreement are unique and that this Agreement does not establish precedent of any kind whatsoever and may

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<sup>1</sup> Upon successful completion of her Probationary Period, Salabarria's Seniority shall be restored from May 1, 2017, which is her original promotion date.

not be used in any manner whatsoever in any proceeding, including but not limited to any labor proceeding of any kind.

5. Consideration. The consideration for this Agreement are the mutual promises, releases, and forbearances recited herein, the adequacy of which is hereby affirmed by the Parties.

6. Miscellaneous. This Agreement is the entire agreement between the Parties on its subject matter and supersedes any other agreement or understanding whatsoever, whether written or oral. The Parties have entered into this Agreement solely on the basis of the language, representations, and understandings expressed in this Agreement and not on the basis of any other representation or understanding whatsoever. This Agreement shall be construed and applied according to its express language and not strictly against any Party, regardless of authorship. This Agreement shall be governed by and construed according to the laws of the State of Florida. Any dispute arising from this Agreement, its application, or its breach shall be heard by a judge and not a jury. The Parties agree that venue shall be proper in Miami-Dade County, Florida, and agree that they shall not challenge such venue, regardless of convenience. If any provision or part thereof of this Agreement shall be found invalid or unenforceable by a court of competent jurisdiction, the remainder of the Agreement shall remain valid and enforceable, provided, however, that if Paragraph 3, "Release," is found invalid or unenforceable, the entire Agreement shall fail and be null and void and shall be treated as if it were never made. The prevailing party in any action of or relating to this Agreement shall be entitled to an award of reasonable attorney's fees and costs.

IN WITNESS WHEREOF, having read and fully understood this Agreement in its entirety, having duly considered the same, and intending to enjoy the benefits and undertake the obligations established herein, the Parties do hereby enter into and execute this Agreement as set forth below.

CITY OF MIAMI BEACH

By   
JIMMY MORALES  
City Manager

DATE

9/17/19


JESSICA SALABARRIA

  
JESSICA SALABARRIA

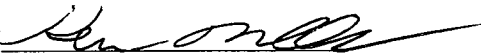
DATE

9/13/19

CHIEF OF POLICE

  
RICK CLEMENTS  
Chief of Police

FRATERNAL ORDER OF  
POLICE, LODGE 8

By   
KEVIN MILLAN  
President

9/13/19  
DATE